Doshi Estates T.C.A.NO.244 of 2020 High Court of Madras

Issues discussed and addressed:

Validity of Revision u/s 263

Facts of the Case:

The assessee is a Partnership Firm consisting of five partners which came into being on 10-10-2008. They are broadly divided into two groups viz., Dhosi and Chandrasekaran Group holding 68 % and 35 % stake respectively. Chandrasekaran Family consists of two partners namely Mr. Akhil Chandrasekaran and Mr. Prem Chandrasekaran, who are the sons of Mr. V. Chandrasekaran and Mrs. Saraswathi Chandrasekaran, who are the joint owners of the land measuring about 2.61 acres in Tambaram. The land owners entered into an Agreement for joint development on 5-1-2007 proposing to put up a Housing Project. The land was developed by the Firm and sale of the flats took place during the assessment years under consideration, AY 2012-13 and 2013-14. The firm filed return of income on 29-9-2012 admitting total income as 'Nil' by claiming deduction u/s 80-IB(10) which was allowed by Assessing Officer.

The Principal Commissioner of Income Tax-5, Chennai ('PCIT' for brevity) invoked his power under section 263 of the Act, who came to the conclusion that the project income for the year is Rs. 22.52 crores and the net profit stands at Rs. 11.35 crores which is approximately 50% on the sales accounted for the year and such huge net profit margins in the business of construction is highly improbable. and the same confirms that the net profit margin includes a major portion of gains that relates to the land sold by Smt. and Shri. Chandrasekaran who diverted as share of profit to their children Mr. Prem Chandrasekaran and Akhil Chandrasekaran. Therefore, the PCIT formed an opinion that the assessee firm would be ineligible for deduction under section 80IB(10) to the extent of Rs. 3,97,40,900/- that is 35% of share of profit for the year and therefore, the claim for deduction has to be restricted to Rs. 7,37,18,972/-

Held by the Authorities:

According to the PCIT, the Partnership Firm was a device adopted by the assessee to arrange its business in such a manner to produce more than the ordinary profits. There can be no presumptions and assumptions while deciding the correctness of an order of assessment, more particularly when the PCIT invokes his power under section 263 of the Act. The Statute mandates twin conditions to be fulfilled while exercising such power and therefore in absence of any material to show that the assessee had so arranged the business and made transaction to produce more than the ordinary profits and the same having not been established by the Revenue, there was no ground for the PCIT to exercise its power under section 263 of the Act.

Ramesh Exports (P.) Ltd IT Appeal Nos.2146 & 2206 (Bang) Of 2017 Bangalore ITAT

Issues discussed and addressed:

Section 37(1) Allowability of expenditure incurred on personnel on software development and marketing

Facts of the Case:

The assessee company is engaged in the business of rendering customised internet advertising services for advertisers such as news, financial services and entertainment for which it has developed a software platform, which can be used from desktop. The assessee has incurred various expenditures, including salary and marketing expenses for conducting feasibility study of the new product in USA to gauge the effect of new software platform among customers and also to start popularising this software platform. However such new platform was abandoned during the subsequent financial year due to rapid change in technology and shifting of technology from desktop to mobile platform.

The Assessing Officer treated the software platform developed by the assessee as capital expenditure as it would give an enduring benefit to the assessee. The assessee is the owner of the software platform being developed and the amount of expenditure made on technical person and in sale and marketing of the software indicated that it is likely to central tool of business of the assessee.

Held by the Authorities:

When the product was in development stage during the year under consideration and the same has never been put to use even in subsequent financial year and finally abandoned, then it cannot be termed that an independent product was came into existence, which gives enduring benefit to the assessee to treat expenditure incurred on development of said product to be in capital in nature. At best, the expenditure incurred by the assessee towards development of new software platform is in the nature of expenditure incurred for preparation of feasibility of the new project in respect of same business, which is already carried out by the assessee, even if it is for expansion of business and definitely cannot be treated as capital expenditure incurred for development of a new product, which gives enduring benefit to the assessee.

As per Accounting Standard-26 prescribed by the ICAI for treatment of expenditure of research and development expenses, the standard clearly laid down the procedure for accounting of research expenditure, as per which expenditure on research should be recognised as an expenditure when it is incurred. The Accounting standard further states that in the research phase of the project, an enterprise cannot demonstrate that an intangible asset exists from which future economic benefits are probable.

Hence, we direct the A.O. to delete additions made towards disallowance of salary expenses incurred for development of new software platform.

Marketing expenses incurred by the assessee has no nexus with new product being developed by the assessee. Further, marketing expenses were incurred in order to show-cause the capabilities of Adadyn to the potential customers and from this it has a clear indication that expenses were incurred primarily towards attracting potential customers and further development of the business in general for the company. When the marketing expenditure incurred towards the overall promotion of the business of the company and there is no direct nexus between the marketing expenses and the new software platform being developed by the assessee, the A.O. as well as Ld. CIT(A) were clearly erred in coming to the conclusion that marketing expenditure is in the nature of capital expenditure.

Judgments Relied Upon by the Authorities:

Karnataka State Industrial & Development Corpn 1987] 163 ITR 657. Karnataka High Court

Nav Bharat Shiksha Samiti IT Appeal No 5952 (Delhi) of 2016 Delhi ITAT

Issues discussed and addressed:

Rejection of Application of Registration u/s 12A

Facts of the Case:

The assessee filed application for registration under section 12A r.w.s 12AA of I.T. Act which was rejected by CIT(E) mainly on following grounds;

a. The assessee had paid salary partly through Bank and partly in cash, but had not deducted tax at source in case of any of the employees.

b. The assessee claimed exemption under section 10(23C)(iiiad) of I.T. Act from Assessment Years 2008-09 to 2011-12, as long as the receipts of the assessee were below Rs. 1 crore. However, once the receipts exceeded Rs. 1 crore, the assessee filed return as a business entity for three years, and it is only because of the change of mind, according to the Ld. CIT(E), that the assessee has now applied for registration

Held by the Authorities:

It is not in dispute that the assessee is engaged in the activity of education which qualifies as "charitable purpose" within the meaning of section 2(15) of I.T. Act. No materials have been brought from the Revenue's

side either in the impugned order of Ld. CIT(E) or in the submissions made by the Ld. CIT(DR), at the time of hearing; to show how any of the provision under section 12A read with 12AA of I.T. Act are not fulfilled by the assessee. In the facts and circumstances of this case, we agree with the contention of the Ld. Counsel for assessee that it is of no relevance, for the purposes of registration under section 12A read with section 12AA of I.T. Act, whether or not tax was deducted at source from salary of the staff. In the facts and circumstances of this case, we also agree with the contentions of Ld. Counsel for assessee that, it is of no relevance, for registration under section 12A read with section 12AA of I.T. Act, if salary has been paid partly in cash and partly by cheque. We also agree with the contention of the Ld. Counsel for assessee that there is nothing in law to prevent the assessee from applying for registration under section 12A read with section 12AA of I.T. Act, at a later stage, if such registration was not sought for by the assessee in earlier years.

Assessee's application for registration under section 12A read with section 12AA of I.T. Act cannot be rejected by Ld. CIT(E) relying on irrelevant considerations, merely on the basis of an unsustainable conclusion. Any rejection of assessee's application for registration under section 12A read with section 12AA of I.T. Act has to be supported by a speaking order stating in clear terms in what manner the requirements under section 12A read with section 12AA of I.T. Act have not been fulfilled by the assessee.

Important updates

a. The Central Board of Direct Taxes (CBDT) has granted major relief to taxpayers who opted for Vivad se Vishwas Scheme. The Board has clarified the designated authority shall allow the declarant to make payment without additional amount on or before 31-03-2021 if he files declaration by 31-12-2020. The requirement of payment within 15 days from date of receipt of certificate from designated authority shall not be applicable in that case.

b. The Central Government has extended the due date for filing a declaration to opt for Vivad Se Vishwas Scheme to 31-12-2020. Further, where tax payment is made on or before 31-03-2021, no additional charges shall be levied. However, where payment is made on or after 01-04-2021, additional charges as specified under section 3 of the Direct Tax Vivad se Vishwas Act, 2020 shall be levied.

c. The CBDT has extended due dates for furnishing tax audit report and filing of Income-tax Return for the Assessment Year 2020-21. The new due date for furnishing of tax audit report is 31-12-2020. The

due date for filing of ITR is 31-01-2021 in case where taxpayer is required to get books of account audited or furnish report in respect of international/specified domestic transactions and 31-12-2020 in all other cases.

d. The Central Board of Direct Taxes (CBDT) has reduced the minimum rating from AA to A for certain funds mentioned in Rule 67(2) of the Income-tax Rules, 1962. Rule 67 prescribes an investment pattern for provident funds which is to be followed mandatorily to avail tax benefits.

e. A writ petition has been filed before the Delhi High Court with a pray to declare that Faceless Appeal Scheme, 2020 is discriminatory, arbitrary and illegal to the extent it provides discretionary hearing opportunity. It was claimed that the right of being heard, even through the videoconferencing mode is subject to the approval of the Chief Commissioner/Director General and thus same is discretionary.

f. The CBDT has issued guidelines, for Assessing Officer or Tax Recovery Officer, who are authorized to carry out function related to recovery of arrear or current tax demand as per the provisions of Income-tax Act. The revised guidelines comes into effect from immediate effect.

g. The Central Board of Direct Taxes (CBDT) has amended Form 3CD, Form 3CEB & ITR 6 applicable for Assessment Year 2020-21. The changes are related to reporting of information about concessional tax regime opted by the person under sections 115BAA, 115BAB, 115BAC & 115BAD. The board has also notified Form 10-IF to exercise option under section 115BAD.

h. The CBDT has issued a press release to further clarify the doubts regarding applicability of provisions of section 206C(1H). It has clarified that TCS is required to be collected when yearly receipts exceeds Rs. 50 lakhs that too in respect of the amount received after 01-10-2020. Such amount shall be considered while determining the threshold of 50 lakhs only.

i. Considering the difficulties being faced by taxpayers due to the Covid-19 pandemic, the CBDT has further extended the due date for filing of revised and belated Income tax return for Assessment year 2019-20 from 30-09-2020 to 30-11-2020.